

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Square D Company
1060 East Third Street
Beaumont, CA 92223
CAD050746775

Respondent

Docket HWCA 2006 - 1165

CONSENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Square D Company (Respondent) enter into this Consent Order and agree as follows:

1.2. Site. Respondent is implementing the post-closure care requirements applicable to the North Post-Closure Care Area (NPCA) and its associated groundwater monitoring wells and sump at the following site: 1060 East Third Street, Beaumont, California, in Riverside County (Site).

1.3. Inspection. The Department inspected the Site on May 9, 2006.

1.4. Authorization Status. Respondent operates under a Hazardous Waste Facility Post-Closure Permit (HWFPCP) issued by the Department on April 30, 1998, then modified on June 19, 2000.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. This Consent Order shall constitute full settlement of the violations alleged below. The Parties, and each of them, agree that this Consent Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. By agreeing to this Consent Order, the Department does not waive any right to take other enforcement actions except as specifically provided in this Consent Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

1.8. Admissions. Respondent admits the violations as alleged in Section 2 below.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violation:

2.1.1. Respondent violated California Code of Regulations (Cal. Code Regs.), title 22, sections 66264.14, 66264.117 (c), (d), and HWFPCP, Appendix A, in that on or about May 9, 2006, Respondent failed to prevent unknowing entry of persons or livestock onto the permitted area, by not having a fence circumventing the closed capped surface impoundment.

2.1.2. Respondent violated Cal. Code Regs., title 22, section 66264.228 (b) (2), in that on or about May 9, 2006, Respondent failed to maintain the integrity and effectiveness of the cover including making repairs of the cap for the NPCA. There were several cracks observed in this area.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent shall comply with the following:

3.1.1. Within thirty (30) days of the effective date of this Consent Order, Respondent shall install a temporary fence at the toe of the slope of the raised portion of the NPCA along side the existing truck traffic lane. In addition, Respondent will install a permanent fence along the boundary of the NPCA where future asphalt work will not be completed. Respondent will submit documentation to the Department showing that a temporary fence was installed.

3.1.2. Within forty five (45) days of receipt of a Notice of Deficiency on the

previously submitted Hazardous Waste Facility Post-Closure Permit Modification request, Respondent shall submit a revised Permit Modification request to replace the temporary fence required in paragraph 3.1.1 above, with a permanent fence. This permanent fence will have a gate opening at the entry to the raised portion of the NPCA large enough to accommodate Priority Pallet's use of the area pallet storage. The opening will be small enough so that access by truck traffic is restricted.

3.1.3. Within thirty (30) days of the effective date of this Consent Order, Respondent will complete repair of cracks on the NPCA.

3.1.4. Respondent shall make all payments at the time and in accord with any other conditions set forth in Section 5 (Penalty) below.

3.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Carmelita E. Lampino, Unit Chief
Statewide Compliance Division, Cypress Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

and

Karen Baker, Branch Chief
Geology, Permitting & Corrective Action Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

3.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Consent Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondent shall carry out this Consent Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

3.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all

property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

3.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

3.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 4.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

3.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

3.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

4. OTHER PROVISIONS

4.1. Liability. Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Consent Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. Parties Bound. This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

4.8. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Consent Order.

5. PENALTY

5.1. Respondent shall pay the Department the total sum of \$23,640, of which \$23,453 is a penalty and \$187 is reimbursement of the Department's costs incurred in this matter.

5.2. Payment of the total sum specified in paragraph 5.1 is due within thirty (30) days from the effective date of this Consent Order.

5.3. Respondent's check(s) shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Carmelita E. Lampino, Unit Chief
Statewide Compliance Division, Cypress Office
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

5.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code, section 25360.1, and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

6. EFFECTIVE DATE

6.1. The effective date of this Consent Order is the date it is signed by the Department.

Dated: February 9, 2007

Original signed by Curt Christensen
Curt Christensen
Supervisor Environmental Projects
Square D Company

Dated: February 16, 2007

Original signed by Carmelita E. Lampino
Carmelita E. Lampino, Unit Chief
Statewide Compliance Division
Cypress Branch
Department of Toxic Substances Control